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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRISTINE M. CARMICHAEL, Plaintiff and Appellant, v. LLOYD C. OWNBEY, JR., Defendant and Respondent.	B201423 (Los Angeles County Super. Ct. No. GC036858)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jan A. Pluim, Judge. Affirmed.

Dr. Christine M. Carmichael, in pro. per., for Plaintiff and Appellant.

Dan Hogue for Defendant and Respondent.

Appellant Christine Carmichael sued respondent Lloyd Ownbey for legal malpractice. (The complaint brought a number of actions, including fraud and breach of contract, but in each instance, the theory was legal malpractice.) Judgment was entered in Ownbey's favor after his motion for summary judgment was granted and Carmichael's motions for reconsideration and motion under Code of Civil Procedure section 473 were denied. We affirm.

Facts

This lawsuit was filed on March 20, 2006. It arises out of Ownbey's representation of Carmichael in a lawsuit for unpaid wages which she brought against Palo/Haklar & Associates, Paul Palo, and Peter Haklar. Trial was in the Superior Court, as a trial de novo after the Labor Commissioner's determination in those defendants' favor. (*Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942.) Judgment was entered in that case, in those defendants' favor, on January 4, 2002. A fees order was entered on May 23, 2002.

At summary judgment, Ownbey proffered the following facts: His representation of Carmichael ended following the entry of fees order. Carmichael appealed the January 3, 2002 and May 23, 2002 orders to the Appellate Department of the Superior Court. She filed the notice of appeal[1] in pro. per. and represented herself throughout the appeal. In a brief in that appeal, Carmichael stated that Ownbey had failed to competently represent her in the case and that she preserved her right to sue him for malpractice. The brief is dated October 13, 2004.

Ownbey supported the first fact, the time at which his representation of Carmichael ended, with his own declaration that he informed Carmichael that he would not represent her in the appeal of *Carmichael v. Palo/Haklar*. The remaining facts were supported by the opinion of the Appellate Department of the Superior Court on

[1] The appeal was dismissed as untimely.

Carmichael's appeal, and by Carmichael's brief itself. She wrote that Ownbey was refusing to "explain his malpractice," had fraudulently concealed from her a serious disability which caused him to be unable to provide effective counsel at the trial, and that while she was not attempting to try Ownbey for legal malpractice, such an action "may happen later."

Hearing on Ownbey's summary judgment motion was set for February 28, 2007, a Wednesday. Carmichael's opposition was filed on Friday, February 23. As Carmichael concedes, her response was untimely. The trial court refused to consider it for that reason, found that Ownbey had carried his burden on summary judgment of showing that all causes of action were barred by the statute of limitations, and granted the motion.

Carmichael moved for reconsideration, contending that her response was late-filed because Ownbey had failed to comply with discovery. The motion was denied.

Carmichael then filed a motion for relief from default under the mandatory provisions of Code of Civil Procedure section 473, again asking that the court consider her late-filed pleadings, and seeking other relief, including sanctions against Ownbey and his counsel for harassment. During most of this case, Carmichael represented herself in pro. per., and the motion was accompanied by her own declaration that she was attorney of record and that the late filing was due to her mistake, inadvertence, surprise or neglect. Hearing on the motion was set for May 31, 2007. On May 21, Carmichael filed a second motion for reconsideration, titled a motion for reconsideration of the denial of her motion for reconsideration. Among other things, Carmichael wrote that she had just discovered that the trial judge had attended the same college as did Ownbey, creating the appearance of bias.

The trial court denied both the motion under Code of Civil Procedure section 473 and the second motion for reconsideration, and entered judgment for Ownbey.

Discussion

The summary judgment motion

A party may move for summary judgment if it is contended that the action has no merit. Summary judgment is properly granted if all the papers submitted show that there is no triable issue of fact and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subds. (a) and (c).) A defendant meets the burden of showing that a cause of action has no merit by showing that there is a complete defense to the action. Once the defendant has met that burden, the burden is on the plaintiff to show a triable issue of fact exists. (Code Civ. Proc., § 437c, subd. (o); *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573.)

Since a summary judgment motion raises only questions of law regarding the construction and effect of the supporting and opposing papers, we independently review them on appeal. (*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 978-979.)

Ownbey moved for summary judgment on the theory that he had a complete defense, the statute of limitations. "Pursuant to [Code of Civil Procedure] section 340.6(a), an attorney malpractice action 'shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.' '[U]nder the provisions of section 340.6, discovery of the negligent act or omission initiates the [one-year] statutory period . . . .' (*Adams v. Paul* (1995) 11 Cal.4th 583, 589, fn. 2.)" (*Samuels v. Mix* (1999) 22 Cal.4th 1, 6-7.)

After conducting an independent review, we determine that summary judgment was properly granted. Ownbey proffered facts which showed that Carmichael knew of the alleged malpractice more than a year before she filed suit. The statute of limitations thus barred this action.

Carmichael argues Ownbey did not carry his burden because he relied on his own declaration, which included matters of which he had no knowledge, and because his supporting documents were hearsay. We see nothing in Ownbey's declaration which was

outside his personal knowledge. Further, the critical facts were found in the Appellate Department opinion and Carmichael's brief before the Appellate Department. Ownbey asked the court to take judicial notice of those documents, and the court properly granted the request. (Evid. Code, § 452.) The documents were properly before the court.

Carmichael contends that the trial court abused its discretion when it refused to consider her late-filed responsive pleading. We see no abuse of discretion. "Code of Civil Procedure section 437c, subdivision (b) itself forbids the filing of any opposition papers less than 14 days prior to the scheduled hearing, and the case law has been strict in requiring good cause to be shown before late filed papers will be accepted." (*Hobson v. Raychem Corp*. (1999) 73 Cal.App.4th 614, 624-625, overruled on unrelated ground, *Colmenares v. Braemar Country Club, Inc*. (2003) 29 Cal.4th 1019, 1031, fn. 6.) If additional time is needed for discovery, the party must request a continuance to present further evidence, as is expressly provided by Code of Civil Procedure section 437c. (*G. E. Hetrick & Associates, Inc. v. Summit Construction & Maintenance Co.* (1992) 11 Cal.App.4th 318, 325, fn. 4.) Carmichael did not do so.

Carmichael also contends that the court erred when it refused to take judicial notice of another action, or actions, concerning Ownbey, and refused to find that that case, or those cases, were related cases. Again, we see no error. The other litigation seems to have no connection to this case, except that it also involves Ownbey as a party. Carmichael contends that the other litigation also involves allegations of malpractice. Even if that is so, it is legally irrelevant.

We say the same about Carmichael's unsupported contention that the trial court had a "pattern and practice" of erroneously granting summary judgment. The contention is unsupported and irrelevant. Our task is to review the ruling in this case, only.

The motions for reconsideration and the motion under Code of Civil Procedure section 473

Carmichael contends that the trial court failed to hear argument on these motions, and thus failed to adjudicate them. Not so. Carmichael was represented at the hearing on the first motion for reconsideration, and the trial court heard argument from counsel.

Carmichael was in pro. per. at the hearing on her motion under Code of Civil Procedure section 473. The trial court invited her to argue. She did so, asking the trial court to consider the second, newly-filed motion for reconsideration. There was no hearing on the second motion for reconsideration, but as the trial court noted, such a motion is improper. The trial court was not obliged to hear oral argument on such a motion.

Bias

Throughout her brief, Carmichael argues that the judgment must be reversed because the trial judge was biased in favor of Ownbey because they attended the same college, or was biased against her because she was in pro. per. or for another reason. Carmichael finds evidence of this bias in the fact that her motions were denied, and in a colloquy between the trial court and Ownbey's counsel at the hearing on the motion under Code of Civil Procedure section 473.

In that colloquy, counsel for Ownbey said, "I have never seen contempt of court, but I think I've seen it now." The court replied "Well, if you'd like to bring a motion, I would entertain it. I think this is getting to be a little much. Motion to reconsider a motion to reconsider. There is no such thing. And now we have counsel here. I'm about ready to impose sanctions here. Bring a motion." No motion was ever filed, and there was no contempt proceeding.

We see nothing in this colloquy, or in any of the trial court's statements or actions, which even hints at bias. Instead, Carmichael filed her pleadings and received a ruling on the merits, according to the law.

Disposition

The judgment is affirmed. Respondent to recover costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.
KRIEGLER, J.